TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 755

MUNICIPAL INVESTORS ASSOCIATION,
APPELLANT,

vs.

CITY OF BIRMINGHAM, A MUNICIPAL CORPORATION, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED NOVEMBER 24, 1941.

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INDEX.

	Original	Print
Record from Supreme Court of Michigan	1	1
Docket entries	1	1
Petition for writ of mandamus	2	2
Exhibit "A"—Special assessment street improvement bond of the Village of Birmingham, dated October 1, 1928	10	8
Exhibit "B"—Demand by Municipal Investors Association on the Village of Birmingham for reassessment sufficient to retire special assessment street improvement bonds, dated January 20, 1941	11	10
Exhibit "C"—Excerpt from Birmingham City Commission proceedings showing adoption of resolution denying demand of Municipal Investors Association	12	11
Order to show cause	13	11
Answer of City of Birmingham, et al., to petition for writ of mandamus	14	12
Answer and petition of Attorney General, intervening to protect the rights and interests of the State of Michigan	17	14

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—8464

	Original	Print
Record from Supreme Court of Michigan—Continued		
Reply of plaintiff	23	17
Opinion of the Court, Chandler, J.	26	18
Concurring opinion of Sharpe, C. J.	32	26
Order denying writ of mandamus	35	28
Petition for appeal	36	28
Order of Chief Justice of Supreme Court of Michigan denying application for appeal	40	31
Order allowing appeal	41	31
Assignment of errors	43	32
Cost bond (omitted in printing)	67	
Citation (omitted in printing)	71	
Praecipe for record	75	35
Clerk's certificate (omitted in printing)	77	
Statement of points and designation of record to be printed	78	37
Order postponing consideration of jurisdiction until hearing on the merits	80	37

[fol. 1] **IN SUPREME COURT OF MICHIGAN**

No. 41532

MUNICIPAL INVESTORS ASSOCIATION, a Michigan Corporation,
Plaintiff,

vs.

CITY OF BIRMINGHAM, et al., Defendants

Mandamus

DOCKET ENTRIES

1941.

Feb. 7. Petition filed.
" 7. Brief in opposition filed.
" 7. Order to show cause allowed.
" 8. Order to show cause issued returnable forthwith.
" 10. Answer filed.
Mar. 12. Note of argument filed.
Apr. 15. Argued and submitted.
May 9. Intervening answer filed by State.
" 23. Reply filed.
June 30. Writ denied, no costs.
Sept. 24. Petition for appeal to Supreme Court of U. S. filed.
" 24. Petition for appeal to Supreme Court of U. S. denied.

[fol. 2] IN SUPREME COURT OF MICHIGAN

Calendar No. 41532

MUNICIPAL INVESTORS ASSOCIATION, a Michigan Corporation, Plaintiff,

vs.

CITY OF BIRMINGHAM, a Municipal Corporation; THE COMMISSION OF THE CITY OF BIRMINGHAM and John E. Martz (Mayor), and Ray A. Palmer, William C. Allee, Ralph I. Coryell, Luther Heacock, Harry Bissett and Wilmer E. Moody (Commissioners), Members of the Commission of the City of Birmingham, and Elmer W. Haack, Assessor of the City of Birmingham, and Their Respective Successors in Office, Defendants.

PETITION FOR WRIT OF MANDAMUS—Filed February 7, 1941

The plaintiff shows unto the Court as follows:

I

That the plaintiff, Municipal Investors Association, is a corporation organized and existing under the laws of the State of Michigan, with its principal office in the City of Detroit, Michigan, and that it is the holder of certain bonds hereinafter described.

II

That the defendant, City of Birmingham, is a municipal corporation organized and existing under and by virtue of the Constitution and Statutes of the State of Michigan, particularly Act No. 279 of the Public Acts of 1909, as amended, [fol. 3] and a charter adopted by the electors of said city on April 3, 1933; that John E. Martz is Mayor of said city and Ray A. Palmer, William C. Allee, Ralph I. Coryell, Luther Heacock, Harry Bissett and Wilmer E. Moody are Commissioners of said city, and that said Mayor and Commissioners constitute the City Commission which is the legislative and governing body of said city; that Elmer W. Haack is Assessor of said city.

III

That the defendant, City of Birmingham, is successor to the Village of Birmingham by reason of the reincorporation of the former Village of Birmingham as a city in 1933, pursuant to the provisions of Act No. 279 of the Public Acts of 1909, as amended; that pursuant to said act and its city charter, the City of Birmingham upon such reincorporation assumed all of the debts and liabilities of such village.

IV

That the said Village of Birmingham, from November 7, 1917 until it was incorporated as the City of Birmingham, was operating under the provisions of Act No. 278 of the Public Acts of 1909, as amended, and a village charter adopted by the electors of said village on the 25th day of October, 1917, as subsequently amended.

V

That in the year 1928, pursuant to the provisions of its charter, the Village of Birmingham took proceedings for the paving of Washington Boulevard from Clawson Road to Lincoln Avenue, Northlawn Drive from Washington to Dorchester, and Southlawn Drive from Bates to Dorchester and for the assessment of 23.4% of the cost thereof, or $5,419.90, to the village at large, and 76.6% of such cost, or $17,742.10, to Special Assessment District No. 146, constituted of the property abutting upon those portions to be improved of said highways. The several amounts as- [fol. 4] sessed against the property in said special assessment district were made payable in five (5) equal annual installments, the first installment becoming due in 1928.

VI

That pursuant to the authority granted in said charter, the Village of Birmingham issued bonds in anticipation of the collection of the special assessments against the property in said Special Assessment District No. 146, numbered 1 to 17, both inclusive, in the denomination of $1000 each, aggregating the principal sum of $17,000, dated October 1, 1928, bearing interest at the rate of 5¼% per annum, and

maturing as follows: $4000 on October 1, 1929, $3000 on October 1, 1930, $4000 on October 1, 1931, $3000 on October 1, 1932 and $3000 on October 1, 1933; that attached hereto, marked Exhibit "A" and made a part hereof is a copy of bond No. 12 of said issue and that all other bonds of said issue were of like tenor except as to number and maturity date. That at the time of the issuance of said bonds, Section 22 of Chapter XX of the village charter contained the following provision relative to special assessment bonds, to-wit:

"Such bonds shall draw interest not exceeding six per cent per annum, as the commission may determine, and shall be payable out of the special assessment district fund when the assessment is collected."

VII

That bonds Nos. 8 to 11, both inclusive, which matured on October 1, 1931, were refunded by refunding bonds Nos. 1 to 4, both inclusive, in the denomination of $1000 each, aggregating the principal sum of $4,000.00, dated October 1, 1931, bearing interest at the rate of 5¼% per annum and maturing $1000 on the 1st day of October of each of the years 1932 to 1935, both inclusive.

VIII

That bonds Nos. 12 to 17, both inclusive, of said original issue are still outstanding, and that bonds Nos. 1, 2 and 4 [fol. 5] of said Refunding issue are still outstanding; that there has been paid upon the principal of each of said original and refunding bonds the sum of $100.00, leaving $900.00 as the balance due upon the principal of each of said bonds, or a total of $8,100; that said principal payment of $100.00 was made upon the bonds of the original issue on June 19, 1939 and upon the bonds of the refunding issue on November 28, 1939; that interest is due upon said original bonds Nos. 12, 13 and 14 from October 1, 1932 and upon said original bonds Nos. 15, 16 and 17 from October 1, 1933, and that interest is due upon said refunding bonds Nos. 1, 2 and 4 from October 1, 1932; that the total amount of said accrued interest to January 1, 1941 is $3,675.23, making the total amount now due on outstanding bonds against said district, in excess of $11,800.00.

IX

That the plaintiff is the holder of said bonds Nos. 12 to 17, both inclusive, of said original issue with an aggregate principal balance due thereon of $5,400 and with interest as follows:

Bonds Nos. 12, 13 and 14—5¼% per annum on $1000.00 from October 1, 1932 to June 19, 1939 and on $900.00 thereafter until paid.

Bonds Nos. 15, 16 and 17—5¼% per annum on $1000.00 from October 1, 1933 to June 19, 1939 and on $900.00 thereafter until paid.

X

That the charters of both the Village of Birmingham and the City of Birmingham provide for the transfer of installments of special assessments becoming delinquent to the next municipal annual tax roll and for their collection thereafter in the same manner as municipal taxes. Said charters also provide for the return of municipal taxes to the County Treasurer in the same manner as county and school taxes are returned. That pursuant to the above mentioned provisions, any special assessments on Special Assessment Roll No. 146 which were not paid when due, were transferred to the annual municipal tax rolls of the [fol. 6] years 1929 to 1933, respectively, and any such special assessments so transferred which were not paid on or before March 1st following their transfer to the annual municipal tax roll, were returned to the County Treasurer along with the unpaid municipal taxes, and any special assessments so returned were thereafter subject to the provisions of the general tax laws of the state in respect to the collection thereof, and also the sale and redemption of property for the non-payment thereof.

XI

That the amount due at the present time upon said outstanding bonds against Special Assessment District No. 146 is in excess of $11,800.00; that the amount on hand in the special assessment fund is the sum of $25.07; that the only money which will hereafter be received from special assessments already levied is that which will be paid on those assessments which were extended under the provisions of Act

No. 126 of the Michigan Public Acts of 1933, as amended (sometimes known as the Moore-Holbeck Act) and moneys allocable to said Special Assessment District No. 146 by reason of the special assessments cancelled under the provisions of the tax laws of the State of Michigan, including Act No. 155 of the Public Acts of 1937, as amended (Scavenger Sale Act) which amounts to be received from the above mentioned sources will not exceed $2,000.00.

XII

That said Special Assessment District No. 146 was constituted of Lots Nos. 21, 22, 44, 45, 74 to 128, 134 to 162 and 192 to 193, all inclusive, of Birmingham Lincoln Lots Re-Subdivision and the west 70 feet of Lots Nos. 85 and 86 and all of Lots Nos. 87 to 103, both inclusive, of Birmingham Lincoln Lots Subdivision; that the total amount assessed against the above mentioned lots in said Birmingham Lincoln Lots Re-Subdivision was the sum of $14,388.77 which was later reduced to $12,436.25; that none of said assessments against said Birmingham Lincoln Lots Re-Subdi- [fol. 7] vision have ever been paid; that the total amount assessed against the above mentioned lots in said Birmingham Lincoln Lots Subdivision was the sum of $3,405.81 which was later reduced to $2,942.61; that part but not all of said assessments against the above mentioned lots in Birmingham Lincoln Lots Subdivision have been paid.

XIII

That Section 15 of Chapter XXI of the charter of said Village of Birmingham provides as follows:

"Section 15. Should any special assessment prove insufficient to pay for the improvement or work for which it was levied, and the expenses incident thereto, the Commission may make an additional pro rata assessment to supply the deficiency; and in case a larger amount shall have been collected than was necessary, the excess shall be refunded ratably to those by whom it was paid."

XIV

That Section 18 of Chapter X of the charter of said City of Birmingham provides as follows:

"Section 18. In all cases of special assessment of any kind against any property where any such assessments shall

prove to be invalid in whole or in part, the commission shall be and it is hereby authorized to cause to be re-assessed such special assessments, and to enforce their collection; and it is further provided that whenever for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay that portion of the cost of the improvement which the commission has determined should be assessed against the property and the owners of property in the special assessment district, then it shall be lawful, and the commission is hereby directed and authorized to cause to be made, an additional assessment upon all the property in such special assessment district to pay for such deficit; and the commission is authorized to continue requiring such re-assessment or additional assessment until a valid and sufficient assessment shall have been made."

XV

That Section 12 of Chapter XVII of the charter of said City of Birmingham provides in part as follows:

[fol. 8] "* * * and all debts and liabilities of the former Village of Birmingham shall be deemed to be the debts and liabilities of the City of Birmingham, and all taxes and special assessments levied and uncollected at the time of such change shall be collected the same as if such change had not been made; provided, that when a different remedy is given in this charter or in any ordinance pursuant thereto, which can be made applicable to any rights existing at the time this charter becomes effective, the same shall be deemed cumulative to the remedies before provided, and may be used accordingly."

XVI

That it is the duty of the defendants to proceed to make an additional assessment against the property in said Special Assessment District No. 146 sufficient to pay the principal and interest due on the outstanding bonds which were issued in anticipation of the collection of special assessments against said district.

XVII

That on the 20th day of January, 1941, the plaintiff made a demand in writing upon the Commission of the City of Birmingham for such additional assessment, a true copy of which is hereto attached, marked Exhibit "B" and made a part hereof; that notwithstanding the duty of the Commis-

sion of said city to proceed to make such additional assessment, the said Commission upon receipt of the above mentioned demand, adopted a resolution denying said demand for an additional assessment, a certified copy of the proceedings in relation thereto being hereto attached, marked Exhibit "C" and made a part hereof.

Plaintiff Therefore Prays:

(1) That the defendants be ordered to show cause why a writ of mandamus should not be issued as herein prayed.

(2) That a writ of mandamus be issued, commanding the defendants to proceed to make an additional assessment against the property in said Special Assessment District No. 146 in an amount so that the collections therefrom will be [fol. 9] sufficient to pay the principal and interest upon the outstanding bonds issued in anticipation of the collection of assessments against said special assessment district.

(3) That plaintiff may have such other and further relief to which it may be entitled.

And plaintiff will ever pray.

Municipal Investors Association, by "Berry and Stevens", Its Attorneys.

"Berry and Stevens", Attorneys for Plaintiff; "Claude H. Stevens", Of Counsel. Business Address: 1000 Penobscot Building, Detroit, Michigan.

Duly sworn to by Carl E. Huyette. Jurat omitted in printing.

[fol. 10] EXHIBIT "A" TO PETITION

Number 12 Dollars 1000

State of Michigan, County of Oakland

Village of Birmingham

District No. 146

Special Assessment Street Improvement Bond

Know All Men By These Presents, that the Village of Birmingham, Oakland County, Michigan, acknowledges itself to owe, and to be hereby held and firmly bound unto

the bearer in the sum of One Thousand Dollars lawful money of the United States of America, which sum it promises to pay at the office of the First National Bank in Detroit, Detroit, Michigan, on the 1st day of October, A. D. 1932, with interest thereon from the date hereof at the rate of 5¼ per cent per annum, payable semi-annually on the 1st day of April and October of each year, upon surrender of the annexed interest coupons as they severally mature, said principal and interest however, being payable from the Special Assessment fund created for the purpose. In case of the inability, neglect or refusal of said First National Bank in Detroit to act, this bond shall be payable at such other financial institution as the then Village Commission shall designate.

This bond is one of a series of 17 bonds, aggregating $17,000.00, of even date and like tenor, issued under the provisions of Section 22 of Chapter XX of the Charter of the Village of Birmingham for the purpose of raising money to pay that portion of the cost of improving the street in special assessment district No. 146, which the Village Commission has determined shall be paid by the property in said district so improved, and which assessment has been divided into five equal annual installments, beginning with the year 1928, and collection of which has been duly authorized and directed by the Village Commission.

And it is hereby certified and recited that the amount of this bond does not exceed any limit of debt as prescribed by the Village Charter, and that all acts, conditions and things required to be done precedent to and in the issuing of this bond have been done, performed and happened in regular and due form according to law.

The full faith and credit of the Village of Birmingham are hereby pledged for the punctual payment of the principal and interest of this bond from the special assessment fund created for the purpose, when the same shall have been collected.

In Testimony Whereof, the Village of Birmingham has caused its corporate seal to be hereunto affixed, and this bond to be signed by its President and Clerk this 1st day of October, A. D. 1928.

Village of Birmingham, by M. Ellerby (Signed), President. Countersigned: Myrtle E. Carson (Signed), Clerk.

[fol. 11] EXHIBIT "B" TO PETITION

Law Offices, Berry and Stevens, 1000 Penobscot Building, Detroit

January 20, 1941.

City Commission, City of Birmingham, Birmingham, Michigan.

GENTLEMEN:

The Village of Birmingham (now City of Birmingham) issued its 5¼% serial Special Assessment Bonds, dated October 1, 1928, in the aggregate principal sum of $17,000, in anticipation of the collection of special assessments against Special Assessment District No. 146, for the paving of Washington Boulevard from Clawson Road to Lincoln Avenue. Both the said bonds and the said special assessments are now past due. There are outstanding, bonds in the principal sum of $8,100 with considerable accrued interest thereon. We understand that the cash balance available for the payment of such principal and interest is approximately the sum of $25.00. The title to the most of the properties in said special assessment district passed to the state in November, 1939, by virtue of the state tax laws. These properties were subsequently sold pursuant to the provisions of Act No. 155 of the Michigan Public Acts of 1937, as amended, but the amount of such sale price allocable to said special assessment district, together with any outstanding special assessments which have not been cancelled, will be far from sufficient to pay the outstanding bonds.

The Municipal Investors Association is the holder of $6,000 of the $8,100 bonds outstanding. Demand is therefore made by the Municipal Investors Association for a reassessment against all of the property included in said Special Assessment District No. 146 in an amount sufficient to pay the principal and interest on the outstanding bonds pertaining to said Special Assessment District No. 146.

Yours very truly, Municipal Investors Association, by "Berry & Stevens," Its Attorneys.

CHS'jd.

[fol. 12] EXHIBIT "C" TO PETITION

Excerpt From Birmingham City Commission Proceedings

—43—

A communication was received from Berry & Stevens, representing the Municipal Investors Association, advising the city that demand is made by the Municipal Investors Association for re-assessment against all of the property included in Special Assessment District No. 146 in an amount sufficient to pay the principal and interest on the outstanding bonds pertaining to said Special Assessment District No. 146.

—44—

Moved by Mayor Martz.

Seconded by Commissioner Allee that the request of Berry and Stevens for re-assessment against property in District No. 146 be denied.

Yeas:—7

Nays:—0

I, Irene E. Hanley, Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct excerpt from the minutes of a regular meeting of the Birmingham City Commission held Monday, January 20th, 1941.

"Irene E. Hanley," City Clerk. (Seal.)

[fol. 13] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER TO SHOW CAUSE—February 7, 1941

On reading and filing the petition of the plaintiff, above named, and on motion of Berry and Stevens, attorneys for plaintiff: It is ordered that said defendants do show cause to this Court forthwith why a peremptory writ of mandamus should not be issued out of and under the seal of this Court, to compel said defendants to proceed to make an additional assessment against the property in Special

Assessment District No. 146 in said City of Birmingham in an amount so that the collections therefrom will be sufficient to pay the principal and interest upon the outstanding bonds issued in anticipation of the collection of assessments against said special assessment district, as appears by the petition filed herein.

It is further ordered that a certified copy of this order be served on the said defendants forthwith.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 14] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ANSWER OF CITY OF BIRMINGHAM, ET AL., TO PETITION FOR WRIT OF MANDAMUS—Filed February 10, 1941

City of Birmingham, a municipal corporation; The Commission of the City of Birmingham: John E. Martz (Mayor) and Ralph A. Palmer, William C. Allee, Ralph I. Coryell, Luther Heacock, Harry Bissett and Wilmer E. Moody (Commissioners), members of the Commission of the City of Birmingham, and Elmer W. Haack, Assessor of the City of Birmingham, defendants herein, answer plaintiff's petition as follows:

1. They admit all the allegations of fact contained in paragraphs I to XV, inclusive, of said petition.

2. They deny the allegations of paragraph XVI of said petition, for the reasons hereinafter set forth.

3. They admit the allegations of paragraph XVII of said petition, except the allegation that it was the duty of the [fol. 15] Commission of said City to proceed to make an additional assessment, which they deny.

4. Special assessments levied in said district have been paid in full for the following lots in Birmingham Lincoln Lots Subdivision: Nos. 88, 90, 91, 92, 94, 96, 98, 100; No. 103 and the South 45½ feet of Lot 102. The remaining lots in said subdivision, to-wit: West 70 feet of Lots 85 and 86; all of Lots 87, 89, 93, 95, 97, 99 and 101; North 19½ feet of Lot 102, were offered for sale at the annual tax

sale for the year 1938 and bid in by the State of Michigan, and were not redeemed, whereby the title to said lots passed to the State of Michigan and said lots were offered for sale in accordance with the provisions of Act No. 155 of the Public Acts of 1937, as amended, and were purchased at public sale by the former owner thereof at the statutory minimum price of twenty-five per cent (25%) of the assessed valuation thereof.

All the lots in said district situated in Birmingham Lincoln Lots Re-subdivision, being Lots 21, 22, 44, 45, 74 to 128, inclusive, 134 to 162, inclusive, 192 and 193, were offered for sale at the annual tax sale for the year 1938 and bid in by the State of Michigan, and were not redeemed, whereby the title to said lots passed to the State of Michigan and said lots were offered for sale in accordance with the provisions of Act No. 155 of the Public Acts of 1937, as amended, and were purchased at public sale by the former owner thereof at the statutory minimum price of twenty-five per cent (25%) of the assessed valuation thereof.

[fol. 16] 5. According to the tax laws of the State of Michigan all liens on lots so sold, including all taxes thereon, were cancelled.

6. Defendants are advised and believe that by the sale of said property for taxes, and the cancellation of tax liens thereon, said lots in the hands of purchasers are not subject to further assessment for the improvement for which said District No. 146 was established, and that the City Commission has no power to levy such reassessment thereon.

7. Defendants are further advised and believe that the levy of such assessment on the lots not so sold and on which special assessments have been paid in full, without the levy of assessment on the lots so sold, would be unjust, unreasonable, and confiscatory, and that the City Commission has no power to levy further assessments on the lots on which the original assessments were paid in full.

8. Defendants therefore deny that they can or should levy any further special assessment in said district No. 146, and deny that plaintiff is entitled to a writ of mandamus or any other relief in the premises.

Miller, Canfield, Paddock & Stone, Attorneys for Defendants.

Dated: the — day of ——, 1941.

[fol. 17] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ANSWER AND PETITION OF ATTORNEY GENERAL, INTERVENING TO PROTECT THE RIGHTS AND INTERESTS OF THE STATE OF MICHIGAN—Filed May 9, 1941

The attorney general of the State of Michigan hereby intervenes in order to protect the right and interest of the State of Michigan in certain of the properties involved therein (Act 232, § 1, Pub. Acts 1919 (Stat. Ann. § 3.221)), and respectfully represents unto the court as follows:

First: For answer to plaintiff's petition for writ of mandamus

(1-15) the intervenor admits the allegations of paragraphs one (1) to fifteen (15), inclusive;

(16) the intervenor denies the allegations of paragraph sixteen (16) thereof;

[fol. 18] (17) the intervenor denies that it is the duty of the commission of the city of Birmingham to proceed to make an additional assessment upon the properties involved in this suit, but he admits all other allegations of the seventeenth (17th) paragraph thereof, and he denies that plaintiff is entitled to any of the relief prayed for in its petition.

Second: For answer to affirmative allegations set forth in paragraph four (4) of defendants' answer to plaintiff's petition for mandamus, the intervenor admits that special assessments levied in said district have been paid in full upon those lots in Birmingham Lincoln Lots Subdivision specified in said paragraph.

He admits that the remaining lots in said subdivision, to-wit: West 70 feet of lots 85 and 86; all of lots 87, 89, 93, 95, 97, 99 and 101; north 19½ feet of lot 102, were offered for sale at the annual tax sale for the year 1938 and bid in by the State of Michigan, whereby the title to said lots passed to the State of Michigan, and said lots were offered for sale in accordance with the provisions of Act No. 155 of the Public Acts of 1937, as amended.

But he *denies* that *all* of said lots were purchased at public sale by the former owners thereof, and avers the truth to be

[fol. 19] (1) that the west 70 feet of lots 85 and 86, all of lots 87, 101, and the north 19½ feet of 102 were purchased by and deeded to non-owners of said lots, none of whom is party to this suit, although interested in the outcome;

(2) that lot 89 was sold to a non-owner, who is not a party to this suit, although interested in its outcome;

(3) and that lots 91, 93 and 95, 97 and 99 were sold on contracts to owners, who are not parties to this suit, although interested in the outcome.

He admits that certain lots in said district situated in Birmingham Lincoln Lots Re-subdivision, being lots 21 and 22, 44, 45, 74 to 88, 89 to 110, 111 to 128, 134 to 156, 157 to 162, 192 and 193, were offered for sale at the annual tax sale for the year 1938 and bid in by the State of Michigan, and were not redeemed, whereby the title to said lots passed to the State of Michigan and said lots were offered for sale in accordance with the provisions of Act No. 155, Pub. Acts 1937, as amended.

But he *denies* that the title to said lots passed to their former owners at said public sale, and avers the truth to be

[fol. 20] (1) that on the 3rd day of March, 1940, at the annual sale at public auction conducted by the state land office board (*viz.*, the annual 'scavenger sale,' so-called), said lots, or parcels thereof, were bid in by the Depositors and Creditors Trust Company, a corporation, which claimed to be the former owner;

(2) that payment in full was not made on said several bids, but the bidder applied to the state land office board to enter into an agreement or contract of purchase, on the statutory ten-year plan in each particular instance;

(3) that in said application for land contract the 'owner' agreed

"to execute a land contract for the purchase of said lands on the form provided by the said (state land office) board within 10 days after notification by mail so to do unless said time limit is extended by the representative of the board, and upon failure to execute said land contract within the time limit as above provided all the rights of

the undersigned to meet such highest bid shall terminate without notice and the payment made herewith shall be forfeited to the State Land Office Board as liquidated damages";

(4) that thereafter the board notified the bidder that said land contract was ready for execution, but, although more than ten days have since elapsed, said contract has not been signed;

[fol. 21] (5) that, at the request of attorneys for the said Depositors and Creditors Trust Company, the bidder for said parcels of land, the time for execution of said land contract has, as intervenor is informed and verily believes, been from time to time extended,—the final agreement being that said contract shall not be signed until this court has decided the questions involved in the case at bar;

(6) that, as intervenor is informed and verily believes, the said Depositors and Creditors Trust Company takes the position, and has informed the state land office board, that it will not execute the said land contract for the purchase of said lands, but will relinquish such rights as it may have by virtue of said bid and application, in the event that the city of Birmingham reassessed the paving tax upon the lots in question;

(7) and that the intervenor is of the opinion that, in such event, absolute title to said lots will devolve upon the State of Michigan.

The attorney general is also informed, and verily believes, that members of the state land office board apprehend that, in such event, other purchasers of lots on land contract will rescind their agreements and title to said property will again become vested in the State of Michigan.

[fol. 22] *Third:* Wherefore, in the opinion of the attorney general, plaintiff's petition for mandamus should be denied

(1st) because the special paving taxes in question may not be reassessed upon property title to which is held by the State of Michigan;

(2nd) because it appears from the pleadings on file that plaintiff's action is premature; and

(3rd) because in no event is plaintiff entitled to relief.

Herbert J. Rushton, Attorney General. By Edmund E. Shepherd, Solicitor General.

Duly sworn to be Marshall P. Witchell. Jurat omitted in printing.

[fol. 23] IN SUPREME COURT OF MICHIGAN

[Title omitted]

REPLY OF PLAINTIFF—Filed May 23, 1941

Plaintiff, in reply to certain matters set forth in the answer of the defendants and in the answer of the Attorney General intervening on behalf of the State of Michigan, says:

(1) It admits the allegations contained in paragraph 4 of the answer of the original defendants except as to the allegation that the West 70 feet of Lots 85 and 86, all of Lots 87, 89 and 101 and the North 19 feet of Lot 102 were purchased by the former owners thereof, and as to such lots plaintiff accepts the statement contained in the answer of the Attorney General to the effect that said lots were sold under the provisions of Act No. 155 of the Public Acts of 1937, as amended, to persons who were not the former owners thereof. Plaintiff alleges however that it is immaterial to the issues in this case whether said lots were or were not sold to former owners thereof.

[fol. 24] (2) It denies the legal conclusions contained in paragraphs 5, 6, 7 and 8 of the answer of the original defendants.

(3) It admits the allegations contained in paragraph "Second" of the answer of the Attorney General, relating to lots in Birmingham Lincoln Lots Subdivision. Plaintiff, upon information and for the purpose of this action, admits the allegations contained in paragraph "Second" of said answer relating to lots in Birmingham Lincoln Lots Re-Subdivision but denies that the circumstances therein set forth constitute a defense to plaintiff's petition. That the purchaser at the Scavenger Sale of the lots in Birmingham Lincoln Lots Re-Subdivision has not as yet sur-

rendered its rights under such sale and the State Land Office Board has not yet released it from its obligations as such purchaser. That said lots are subject to taxation even though the contract therefor has not yet been executed.

(4) It denies that its petition for writ of mandamus should be denied for the reasons set forth in paragraph "Third" of the answer of the Attorney General.

(5) Plaintiff, in further reply to the aforementioned answers, says that if Act No. 206 of the Public Acts of 1893, as amended, and Act No. 155 of the Public Acts of 1937, as amended, are to be construed as cancelling plaintiff's right to a reassessment under the provisions of the charter of the Village of Birmingham, then said acts to that extent are unconstitutional in that they impair the obligation of plaintiff's contract in violation of Section 9 of Article II of the Michigan Constitution and Section 10 of Article I of the Federal Constitution, and deprive plaintiff of its property without due process of law in violation of Section 16 of Article II of the Michigan Constitution and the 5th and 14th Amendments to the Federal Constitution.

(6) Plaintiff alleges that notwithstanding anything con-
[fol. 25] tained in either of said answers, it is entitled to a writ of mandamus as prayed.

Municipal Investors Association, by "Berry and Stevens", Its Attorneys. "Berry & Stevens", Attorneys for Plaintiff, 1000 Penobscot Building, Detroit, Michigan.

Duly sworn to by Carl E. Huyette. Jurat omitted in printing.

[fol. 26] IN SUPREME COURT OF MICHIGAN

MUNICIPAL INVESTORS ASSOCIATION, Plaintiff,

vs.

CITY OF BIRMINGHAM, et al., Defendants

OPINION

Before the Entire Bench—except Butzel.

CHANDLER, J.:

Plaintiff is the holder of six $1,000 bonds numbered 12 to 17 inclusive, which were issued by the Village of Birming-

ham on October 1, 1928, as part of a series of 14 bonds of like denomination in anticipation of the collection of special assessments to be assessed against special assessment district No. 146, composed of 106 lots to be improved by a street-paving project. The Village of Birmingham reincorporated as the city of Birmingham in 1933, and the city assumed all of the debts and liabilities of the village including these bonds which bore interest at the rate of 5¼ per cent, per annum, and matured on October 1st of the year indicated as follows: $4,000—1929; $3,000—1930; $4,000—1931; $3,000—1932; and $3,000—1933. In addition to the bonds which plaintiff holds, there are yet outstanding 3 of 4 bonds which were issued to refund the obligations maturing in 1931.

The special assessment district consisted of 18 lots in Birmingham Lincoln Lots subdivision and 88 lots in Birmingham Lincoln Lots resubdivision. The sum of $14,388.77, later reduced to $12,436.25, was levied against the resubdivision property, but nothing was ever paid thereon. An assessment of $3,405.81, later reduced to $2,942.61, was made against the subdivision premises, but payment was made on only 9 and a fraction lots.

[fol. 27] A payment of $100 was made upon plaintiff's bonds on June 19, 1939, and upon the refunded obligations on November 28, 1939, leaving a principal amount of $8,100 due and owing, which with accrued interest to January 1, 1941, constitutes an outstanding indebtedness in excess of $11,800. The amount on hand in the assessment fund is $25.67.

All the lots in both subdivisions upon which assessments were levied but not paid were offered for sale at the annual tax sale for the year 1938 and bid in by the State of Michigan. Title passed to the State upon failure of the owners to exercise their right of redemption.

Alleging that no more than $2,000 will be received upon the assessments already made and moneys allocable to the assessment district by reason of the cancellation of special levies under the provisions of Act No. 155, Pub. Acts 1937, as amended (Comp. Laws Supp. 1940, Sec. 3723-1 to 3723-14, Stat. Ann. Sec. 7.951 et seq.), plaintiff instituted this action for a writ of mandamus to compel defendants to make an additional assessment, a demand for a reassessment of the property in the district in an amount sufficient to pay the

principal and interest of the outstanding bonds having been denied by the defendant city commission.

Plaintiff argues that the officials of the city of Birmingham are required by charter to make an additional deficiency levy and that the sale of the property to the State under the general property tax laws and subsequent conveyance by the State under Act No. 155, Pub. Acts 1937, as amended, does not preclude such levy, for such sale affects only existing liens and not additional deficiency liens which were nonexistent at the time of sale. Defendants have assumed that it would have been the duty of the city commission to have levied additional deficiency assessments had there been no tax sale, but vigorously resist this proceeding upon the theory that they have been relieved of such duty and no longer have the power to levy further assessments by reason of the cancellation of taxes and assessments when absolute title to most of the lots in the district vested in the State and did not revive when the lots were repurchased by [fol. 28] the former owner in accordance with the terms of Act No. 155, Pub. Acts 1937, subsequently amended by Acts Nos. 29, 244, and 329, Pub. Acts 1939, and the general property tax law, as amended by Acts Nos. 114 and 325, Pub. Acts 1937.

In the recent case of Baker v. State Land Office Board, 294 Mich. 587, 592-594, Justice McAllister described the background giving rise to the enactment of the foregoing statutes:

"Between the years 1920 and 1930 speculative activities in real estate in the State, unrestrained by normal caution and on a scale unparalleled, had resulted in platting subdivisions with building lots sold at highly inflated prices. The same exaggeration seeped into farm lands and business properties in cities. During this period municipalities and their officials encouraged the speculative movement by approval, in undeveloped areas, of widespread improvements, including sewer extensions, sidewalks, and pavements. The entire movement was pervaded by an enthusiasm uncolored by moderation. But all of these plans and hopes collapsed under the pitiless and inexorable advance of economic depression, of which this court has on several occasions taken judicial notice. * * *"

"The result of this activity was that taxes on excessively high assessments became delinquent and accumulated in

amount until they greatly exceeded the assessed valuation. For approximately six years subsequent to 1932, no tax sales were held; moratorium statutes were passed by the legislature, embodying waiver of interest and penalty charges and providing for payment of taxes in instalments covering a 10-year period; but such efforts were in vain, and the unpaid taxes accumulated until in some counties they exceeded five times the amount of the assessed valuation of the property. Planning commissions, which occupied themselves with a possible solution of the problem, were appointed by the governor, and concluded that the various plans to remedy the situation had failed to stop the abandonment of tax delinquent land; and legislative committees made exhaustive studies in an effort to devise means of overcoming the rapidly growing peril which was assuming catastrophic form. The result was the enactment of Act. No. 155, Pub. Acts 1937, and the amendment of the general property tax law by Acts Nos. 114 and 325, Pub. Acts 1937."

One cannot but conclude, considering the motivating force behind this legislation, that it was the answer of the legislature to the desperate problem of delinquent taxes based upon property valuation having no foundation in fact, and to clear away the debris left by an abnormally high tide of prosperity swept up by an irresistible current of speculation.

"The primary and inducing purpose of the legislation was to secure a portion of the unpaid taxes, rather than nothing, and to restore lands to a tax-paying basis, instead of supinely allowing them to accumulate tax delinquencies with no hope of ever recovering them." Baker v. State Land Office Board, supra, 606.

[fol. 29] Pursuant to legislative intent the Michigan Supreme Court has held that a taxpayer may bring mandamus to compel a city to place on its tax rolls immediately all parcels of land sold under the "scavenger" act even though the State land office board had not as yet executed deeds or contracts to the successful bidder; that such lands are subject to taxation when a bid is accepted and notice of sale given by the agent of the board to the county treasurer who in turn is obliged to notify the proper assessing officers. Wilson v. City of Pontiac, 294 Mich. 79.

It is remedial legislation and is to be construed as such. Oakland County Treasurer v. Auditor General, 292 Mich. 38.

"In interpreting the act our duty is to ascertain the meaning of the statute, to give it full force and effect, coloring our construction by the purpose of its enactment. The statute is remedial and is entitled to a liberal construction. * * * It is said to be the duty of the court to draw inferences from the evident intent of the legislature, as gathered from a view of the law in its entirety; we must render effectual the specific things which are included in the broad and comprehensive items and purposes of the law." Wilson v. City of Pontiac, supra, 86.

Plaintiff says that the additional assessment sought in this case has not yet been levied against the premises and therefore was not a lien when the State acquired title pursuant to the terms of the general tax laws, and hence was not extinguished. A contrary holding, argues plaintiff, would result in the impairment of contractual obligations. In the Baker case, supra, it was claimed that there was nothing in the title of the general property tax law as amended by Act No. 114, Pub. Acts 1937 (Comp. Laws Supp. 1940, Sec. 3459, Stat. Ann. 1940 Cum. Supp. Sec. 7.112), to indicate that it covered the cancellation of past as well as future taxes and special assessments, or that municipalities which have borrowed in anticipation of the collection of taxes or issued special assessment bonds shall have such taxes and assessments cancelled. A review of the briefs filed in the Baker case shows that counsel for plaintiff herein filed a brief amicus curiae in which many of the cases relied upon by plaintiff in the instant suit were cited. Notwithstanding the fact that the court had those cases before it, the argument made was repudiated upon the [fol. 30] ground that it was unnecessary to include in the title the nature of the interest secured by the purchaser upon the sale, as well as the specific tax incumbrances from which the property was freed in such proceedings, and the court concluded that the statutes in question do not contravene the requirements of the State or Federal Constitution forbidding the impairment of the obligations of contract.

"It is claimed that the statute destroys vested rights of municipalities to tax liens and assessments already assessed

and levied, and destroys property and contract rights of individuals who have purchased bonds under the assumption of their payment through collection of the very taxes and assessments which the act cancels. In addition to our determination as above expressed, it can be said that such purchasers can be assumed to have purchased with knowledge that the lien upon the property securing such taxes and assessments might be displaced." Baker v. State Land Office Board, supra, 599.

That act, passed the same year as Act No. 155, Pub. Acts 1937, amended section 67 of Act No. 206, Pub. Acts 1893 (1 Comp. Laws 1929, Sec. 3459), and added the following significant language to the decree to be entered upon the sale of property for tax delinquencies:

"'It is further ordered, adjudged and decreed that title to each parcel of land ordered in this decree to be offered for sale, and which parcel of land is bid in at such sale to the State, shall become absolute in the State of Michigan on the expiration of the period of redemption from such sale, and all taxes and other liens and incumbrances, of whatever kind or nature * * * cancelled as of such date. * * *'

"Upon the entering of the decree hereinbefore provided for, absolute title to the lands therein shall vest in the State of Michigan as provided in said decree."

Act No. 155, Sec. 9, Pub. Acts 1937, defining the authority of the State land office board to execute deeds and conveyances, reads in part as follows:

"Any quitclaim deed or deeds executed by the board shall convey title in fee to land vested in the board under the provisions of this act, free from any incumbrances, except as herein otherwise provided."

The exception referred to is not pertinent to this discussion.

Act No. 244, Pub. Acts 1939, which amended Act No. 155, Sec. 10, Pub. Acts 1937, provides for the division of the receipt of moneys by the State land office board "in proportion to the delinquent taxes and special assessments of such units cancelled against any description of land sold under [fol. 31] the provisions of this act, by the board, any county

treasurer or the department of conservation," and refers to the title acquired by the State in these words:

"Such cancelled taxes and special assessments shall be deemed to include all taxes and assessments levied or becoming liens against said lands prior to the vesting of title in the State of Michigan."

The clear import of the language of the foregoing amendatory enactments, and the obvious intent and purpose of the legislature to relieve owners from the weight of accumulated obligation, James A. Welch Co., Inc., v. State Land Office Board, 295 Mich. 85, must lead one to the conclusion that when title to the lots here in question became absolute in the State of Michigan upon expiration of the period of redemption provided by the tax law free of all taxes and other liens and incumbrances of whatever kind or nature, and future and deficiency as well as past assessments and taxes were cancelled. To hold otherwise would defeat the purpose of this remedial legislation by a narrow and unwarranted construction, and would once again give rise to the vicious circle of assessment based upon inflated valuation; refusal or inability of the owner to pay; followed by a sale of the premises pursuant to the State's sovereign power of enforcing the collection of taxes.

It should be borne in mind that when the lots in question were sold for delinquencies, upon failure to redeem, the title vested absolutely in the State with power to dispose of them in any way not contrary to the Constitution. Upon resale by the State land office board, a new chain of title originated, evidenced by a quitclaim deed, "free of any incumbrances."

Said Justice Cooley in the early case of Sinclair v. Learned, 51 Mich. 335, 344:

"Every sale of lands under our tax system is a sale of the complete title; and if legal, all prior titles are cut off by it."

In the more recent case of Krench v. State of Michigan, 277 Mich. 168, 179, it is stated:

"The State held title in fee simple. The original title had come to an end and a new chain of title originated with the State. The deed to Lucinda Turner was no part of any statutory proceedings instituted for the purpose of fore-

[fol. 32] closing the interest of an original owner who had become delinquent in the payment of taxes. This should be kept in mind for it notes the distinction between sales calculated to cut off former ownership and that of vested ownership in the State. In the one instance the statute divests title in one and vests it in another through tax foreclosure proceedings, while in the other a new title originates by deed from the State. The State, having title in fee, could like any other owner in fee, deed with reservation of oil, gas and minerals. It needed no amendment to an inapplicable statute to enable the State, by legislative enactment, to establish a policy with reference to land owned by the State in fee. The deed to Lucinda Turner was not a tax sale deed but one upon bargain, with sale by the State, the owner in fee of the land, and such owner could and did sever the divisible fees."

The rule is reiterated in Rathbun v. State of Michigan, 284 Mich. 521, 539, in these words:

"By the foregoing provisions there can be no doubt that after the period for redemption of property bid off to the state for delinquent taxes, the State receives the absolute title to such lands, and in the instant case the State owned the absolute title to the lands in controversy prior to any of the transactions with J. F. Rathbun."

"Inasmuch as the State is the absolute owner of the lands, the legislature is empowered to provide for the sale thereof in any way not prohibited by the Constitution." Baker v. State Land Office Board, supra, 602.

See, also, Hoffman v. Otto, 277 Mich. 437.

The Legislative body of the State has determined in what manner lands owned by the State shall be sold. In a long and able opinion to which reference has been made the constitutionality of this legislation was upheld, and having determined that the right to make any further special deficiency assessments as well as actual assessments made are totally and completely extinguished and cancelled, it follows that petitioner's demand for a writ of mandamus should be and is denied.

No costs awarded, a public question being involved.

Sharpe, C. J., and Bushnell, Boyles, North, and Wiest, JJ., concurred with Chandler, J.

Concurring Opinion

Sharpe, C. J.:

I concur in the result reached by Mr. Justice Chandler. The paramount question involved in this case may be stated as follows: Do the statutes here involved prevent reassessment on special assessment districts when the land in such districts has been bid in by the State at the tax sale and then resold under the so-called scavenger act?

Act No. 206, Sec. 67, Pub. Acts 1893, as last amended by Act No. 282, Pub. Acts 1939 (Comp. Laws Supp. 1940, Sec. 3459, Stat. Ann. 1940 Cum. Supp. Sec. 7.112), dealing [fol. 33] with the decree to be entered upon the sale of property for tax delinquencies, provides:

"'It is further ordered, adjudged and decreed that title to each parcel of land ordered in this decree to be offered for sale, and which parcel of land is bid in at such sale to the State, shall become absolute in the State of Michigan on the expiration of the period of redemption from such sale, and all taxes and other liens and incumbrances, of whatever kind or nature, cancelled as of such date.' • • •

"Upon the entering of the decree hereinbefore provided for, absolute title to the lands therein shall vest in the State of Michigan as provided in said decree."

Act No. 155, Sec. 9, Pub. Acts 1937 (Comp. Laws Supp. 1940, Sec. 3723-9, Stat. Ann. 1940 Cum. Supp. Sec. 7.959), defining the authority of the State land office board to execute deeds and conveyances, reads as follows:

"Any quitclaim deed or deeds executed by the board shall convey title in fee to land vested in the board under the provisions of this act, free from any incumbrances."

Under the above authority, when the land is sold to the State for tax delinquencies, all incumbrances upon the land are discharged; and under the scavenger act, such land owned by the State is sold by it free of all incumbrances. Is the liability to reassessment an incumbrance within the meaning of these statutes? It is the general rule that a special assessment does not become an incumbrance until it has become a lien against the premises. See 72 A. L. R. 302; Jaques v. Tomb, 179 Calif. 444 (177 Pac.

280); Cemansky v. Fitch, 121 Iowa, 186 (96 N. W. 754); Metropolitan Life Ins. Co. v. Union Trust Co., 283 N. Y. 33 (27 N. E. 2d 225, 128 A. L. R. 370); Lindsay v. Eastwood, 72 Mich. 336.

In Post v. Campau, 42 Mich. 90, we said:

"Anything is an incumbrance which constitutes a burden upon the title; a right of way, Clark v. Swift, 3 Metc. (44 Mass.) 390, 392; a condition which may work a forfeiture of the estate, Jenks v. Ward, 4 Metc. (45 Mass.) 404, 412; a right to take off timber, Cathcart v. Bowman, 5 Pa. 317; a right of dower, whether assigned or unassigned, Runnels v. Webber, 59 Me. 488. In short, 'every right to, or interest in the land, to the diminution of the value of the land; but consistent with the passage of the fee by the conveyance.' Prescott v. Trueman, 4 Mass. 627, 630 (3 Am. Dec. 246)."

[fol. 34] Under the above definition of an incumbrance, it would naturally follow that the possibility of reassessment would constitute an incumbrance and thus be cancelled. Moreover, the city of Birmingham has no power or authority to levy a special assessment against the land while it is owned by the State of Michigan.

In People, ex rel. Auditor General, v. Ingalls, 238 Mich. 423, 425, we said:

"The doctrine has been pretty well settled in this State and elsewhere that property owned by the State or by the United States is not subject to taxation unless so provided by positive legislation. And municipalities and State agencies are included in this class when their property is used for public purposes. The reason which supports this doctrine is that, if taxes were permitted to be levied against the sovereign, it would be necessary to tax itself in order to raise money to pay over to itself. This would be an idle thing to do. And, besides, it is rather incongruous that the creature should have the right to tax its creator without its consent. Out of this reason has grown an implied presumption that the State is exempt from all taxes unless the one asserting it can point to some legislation in support of it. We are not aware of any law, nor has any been called to our attention, which authorizes the city of Detroit to levy any tax or assessment against State property. Unless it can do this, its contention must fail. Again, if this tax can be levied against State property, who has authority to

pay the tax, and, if it is not paid, who has authority to sell the land to pay the tax?"

The writ is denied.

Bushnell, Boyles, and North, JJ., concurred with Sharpe, C. J. Butzel, J., did not sit. McAllister, J., took no part in this decision.

[fol. 35] IN SUPREME COURT OF MICHIGAN

41532

MUNICIPAL INVESTORS ASSOCIATION, a Michigan corporation, Plaintiff,

vs.

CITY OF BIRMINGHAM, et al., Defendants

ORDER DENYING WRIT OF MANDAMUS—June 30, 1941

This matter having been heard upon the petition of plaintiff, the answer of defendant, the answer of the intervening defendant, the reply of the plaintiff to said answers, and the briefs of counsel for the respective parties hereto, and due consideration thereof having been had by the Court, and it appearing to this Court upon such consideration that the writ of mandamus as prayed for by plaintiff ought not to be granted, it is hereby denied, but without costs to either party.

Clerk's Certificate to foregoing order omitted in printing.

[fol. 36] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN TO THE SUPREME COURT OF THE UNITED STATES—Filed September 24, 1941

To The Honorable Frank Murphy Associate Justice of the Supreme Court of the United States:

Your petitioner, Municipal Investors Association, a corporation organized and existing under the laws of the State of Michigan, respectfully shows:

I

That petitioner is the plaintiff and appellant in the above entitled cause.

[fol. 37]

II

That petitioner filed its petition in the above entitled cause in the Supreme Court of the State of Michigan on the 7th day of February, A. D. 1941, praying that a writ of mandamus be issued commanding the defendants therein to proceed to make a deficiency assessment against the property in Special Assessment District No. 146 in the City of Birmingham, Michigan, in an amount so that *that* collections therefrom would be sufficient to pay the principal and interest upon the outstanding unpaid bonds issued in anticipation of assessments against said special assessment district, a major portion of which bonds are held by your petitioner; that on the 7th day of February, A. D. 1941, an order to show cause was issued by the Supreme Court of the State of Michigan to the defendants, ordering the said defendants to show cause why a peremptory writ of mandamus should not be issued in accordance with the prayer in said petition; that said cause was heard by the Supreme Court of the State of Michigan upon the petition of plaintiff, the answer of defendants, the answer of the intervening defendant, State of Michigan, the reply of plaintiff to said answers, and the printed briefs and oral arguments of counsel.

III

That on the 30th day of June, A. D. 1941, the Supreme Court of the State of Michigan rendered its decision holding that plaintiff was not entitled to the relief prayed for by it in said petition; and that on said 30th day of June, A. D. 1941, an order was entered in said cause in the Supreme Court of the State of Michigan denying to the plaintiff a writ of mandamus; and that said order was the final judgment of said court, which is the highest court of the State of Michigan in which a decision in said suit could be had.

IV

That in said cause there was drawn in question the validity of the following statutes of the State of Michigan, to-wit:

(a) Act No. 206 of the Michigan Public Acts of 1893, as amended;

[fol 38] (b) The amendments to Section 67 of Act No. 206 of the Michigan Public Acts of 1893, which are em-

bodied in Act No. 114 of the Michigan Public Acts of 1937 and in Act No. 282 of the Michigan Public Acts of 1939;

(c) Section 67 (a) of Act No. 206 of the Michigan Public Acts of 1893, which section was added by Act No. 114 of the Michigan Public Acts of 1937 and amended by Act No. 282 of the Michigan Public Acts of 1939;

(d) Act No. 114 of the Michigan Public Acts of 1937;

(e) Act No. 282 of the Michigan Public Acts of 1939;

(f) Act No. 155 of the Michigan Public Acts of 1937, as amended by Acts Nos. 29, 244 and 329 of the Michigan Public Acts of 1939, and particularly Sections 9 and 10 of said Act No. 155;

in so far as the said statutes cancel plaintiff's right to a deficiency assessment for the payment of its bonds, on the ground that said statutes are repugnant to the Constitution of the United States; and that the decision of the Supreme Court of the State of Michigan was in favor of the validity of said statutes notwithstanding your petitioner's contention to the contrary.

V

That the judgment and decision of said court was erroneous in sustaining the validity of the aforesaid acts; said acts being in violation of that part of Section 10 of Article I of the Constitution of the United States which provides that "No state shall * * * pass any * * * law impairing the obligation of contracts * * *"; that portion of the 5th amendment to the Constitution of the United States which provides that "No person shall * * * be deprived of * * * property without due process of law"; and that portion of the 14th amendment to the Constitution of the United States which provides that "Nor shall any state deprive any person of * * * property without due process of law".

VI

That the errors upon which petitioner claims to be entitled to an appeal are more fully set out in the assignment [fol. 39] of errors filed herewith; and that there is also filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by the rules of said court.

Wherefore, petitioner prays for the allowance of an appeal from said Supreme Court of the State of Michigan to

decision of the Supreme Court of the State of Michigan may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the Supreme Court of the United States in order that the the State of Michigan, may be sent to the Supreme Court of the United States as provided by law.

Berry and Stevens, Claude H. Stevens, Attorneys for Petitioner and Proposed Appellant. Business Address: 1000 Penobscot Building, Detroit, Michigan.

Dated: September 24, 1941.

[fol. 40] IN SUPREME COURT OF MICHIGAN.

[Title omitted]

ORDER OF CHIEF JUSTICE OF THE SUPREME COURT OF MICHIGAN DENYING APPLICATION FOR APPEAL—September 24, 1941

The appellant having presented its application for appeal to the Supreme Court of the United States from the judgment entered on the 30th. day of June 1941 in said cause, which application was accompanied by appellant's assignments of errors and statement of jurisdiction, the said application is hereby denied.

Edward M. Sharpe, Chief Justice of the Supreme Court of the State of Michigan.

September 24, 1941.

[fol. 41] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—October 15, 1941

The petition of Municipal Investors Association, the appellant in the above entitled cause, for an appeal in said cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Michigan, together with the assignment of errors and the statement

of jurisdiction, have been presented to the undersigned and the records in this cause having been considered,

It Is Hereby Ordered, that an appeal be and it is hereby allowed to the Supreme Court of the United States from the [fol. 42] final judgment in said cause, dated the 30th day of June, 1941, of the Supreme Court of the State of Michigan, as prayed in said petition, and the Clerk of the Supreme Court of the State of Michigan shall within forty (40) days from this date make and transmit to the Supreme Court of the United States under his hand and the seal of said court, a true copy of the material parts of the record herein, which shall be designated by praecipe or stipulation of the parties or their counsel herein.

It Is Further Ordered, that the said appellant shall give a good and sufficient cost bond in the sum of Five Hundred Dollars ($500.00), that said appellant shall prosecute said appeal to effect and answer all costs if he fails to make his plea good.

Frank Murphy, Associate Justice of the Supreme Court of the United States.

Dated: October 15th, 1941.

[fol. 43] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—September 24, 1941

The said Municipal Investors Association assigns the following errors in the records and proceedings in said cause:

1. That the Supreme Court of the State of Michigan in holding that those properties in Special Assessment District No. 146 in the Village (now City) of Birmingham, Michigan, which were sold to the State of Michigan at the tax sale in 1938 and not redeemed within eighteen months thereafter at which time title became absolute in the State of Michigan, and which were later sold to the former owner thereof pursuant to the terms of Act No. 155 of the Michigan Public Acts of 1937, as amended, were not subject to a [fol. 44] future deficiency assessment granted by the

charter of said village for the payment of plaintiff's bonds issued in the year 1928, erred for the following reasons:

(a) that there is no valid statutory authority for such a holding;

(b) that the statutes adopted in 1937 and 1939 (Act No. 114 of the Michigan Public Acts of 1937, Act No. 282 of the Michigan Public Acts of 1939 and Act No. 155 of the Michigan Public Acts of 1937, as amended by Acts Nos. 29, 244 and 329 of the Michigan Public Acts of 1939) upon which such holding was based, are unconstitutional in so far as the said statutes cancel plaintiff's right to a deficiency assessment for the payment of its bonds, in that said statutes impair the obligation of plaintiff's pre-existing contract in violation of Section 10 of Article I of the Constitution of the United States and deprive plaintiff of its property without due process of law in violation of the 5th and 14th Amendments to said Constitution.

2. That the Supreme Court of the State of Michigan erred in refusing to hold that the above mentioned statutes were unconstitutional as being repugnant to the aforesaid provisions of the Constitution of the United States.

3. That the Supreme Court of the State of Michigan, after holding that the aforesaid statutory provisions adopted in the years 1937 and 1939 should be construed to cancel future deficiency assessments as well as past assessments and taxes against property sold under the provisions of Act No. 155 of the Michigan Public Acts of 1937, as amended, erred in holding that the above mentioned statutory provisions as so construed by the court, were not unconsitutional as being repugnant to the aforementioned provisions of the Consitution of the United States, and erred in refusing to hold that said statutory provisions were unconstitutional for such reason.

[fol. 45] 4. That the Supreme Court of the State of Michigan erred in holding that the provisions of Section 67 of Act No. 206 of the Michigan Public Acts of 1893, as said section was amended by Act No. 114 of the Michigan Public Acts of 1937 and Act No. 282 of the Michigan Public Acts of 1939, in so far as the amendments thereto made in the years 1937 and 1939 cancelled plaintiff's pre-existing right to a deficiency assessment for the payment of its bonds,

were not unconstitutional as being repugnant to the above mentioned provisions of the Constitution of the United States; and in refusing to hold that said section was repugnant to said constitutional provisions.

5. That the Supreme Court of the State of Michigan erred in holding that the provisions of Act No. 155 of the Michigan Public Acts of 1937, as amended by Acts Nos. 29, 244 and 329 of the Michigan Public Acts of 1939 and particularly Sections 9 and 10 of said Act No. 155, as amended, in so far as they cancelled plaintiff's right to a deficiency assessment, were not unconstitutional as being repugnant to the above mentioned provisions of the Constitution of the United States; and in refusing to hold that the provisions of said section were repugnant to said constitutional provisions.

6. That the Supreme Court of the State of Michigan erred in holding that Act No. 206 of the Michigan Public Acts of 1893, as amended by Act No. 114 of the Michigan Public Acts of 1937 and Act No. 282 of the Michigan Public Acts of 1939, and Act No. 155 of the Michigan Public Acts of 1937, as amended by Acts Nos. 29, 244 and 329 of the Michigan Public Acts of 1939, in so far as any parts of said acts adopted subsequent to the issuance of plaintiff's bonds, cancel plaintiff's right to a deficiency assessment for the payment of such bonds, were constitutional and not repugnant to the above mentioned provisions of the Constitution of the United States; and in refusing to hold that said acts were unconstitutional as being repugnant to said constitutional provisions.

[fols. 46-66] 7. The Supreme Court of the State of Michigan erred in entering its order of June 30, 1941, denying to plaintiff a writ of mandamus as prayed, for the reason that such denial was based upon the provisions of the statutes hereinbefore mentioned, which statutes are unconstitutional in that they impair the obligation of plaintiff's pre-existing contract contrary to the provisions of Section 10 of Article 1 of the Constitution of the United States and deprive plaintiff of its property without due process of law contrary to the provisions of the 5th and 14th Amendments to said Constitution.

For which errors the appellant, Municipal Investors Association, prays that the judgment of the Supreme Court of

the State of Michigan entered in said cause on the 30th day of June, 1941, be reversed and a judgment rendered in favor of the appellant and that said cause be remanded to the Supreme Court of the State of Michigan for such additional action by said court as may be necessary in order that appellant may have the relief prayed for in its petition for a writ of mandamus.

Berry & Stevens. Claude H. Stevens, Attorneys for Plaintiff and Appellant. 1000 Penobscot Building, Detroit, Michigan.

Dated: September 24, 1941.

[fols. 67-70] Cost Bond on appeal for $500 approved Oct. 15, 1941, and filed Oct. 20, 1941 omitted in printing.

[fols. 71-74] Citation in usual form showing service. Miller, Canfield, Paddock & Stone and Harry Allen et al., omitted in printing.

[fol. 75] In Supreme Court of Michigan

[Title omitted]

Praecipe Re Transcript of Record—October 20, 1941

To the Clerk of the Supreme Court of the State of Michigan:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following papers and no others, to-wit:

(1) Copy of calendar entries.
(2) Copy of plaintiff's petition for writ of mandamus.
(3) Copy of order to show cause issued February 7, 1941.
(4) Copy of defendants' answer.
(5) Copy of intervening petition and answer of the State of Michigan.

(6) Copy of plaintiff's reply to answer of defendants and intervening defendant.

[fol. 76] (7) Copy of opinions of the Court, filed June 30, 1941.

(8) Copy of the final order of the Court, made June 30, 1941.

(9) Plaintiff's petition for appeal to the United States Supreme Court.

(10) Plaintiff's assignments of errors.

(11) Plaintiff's jurisdictional statement.

(12) Order allowing appeal made by the Honorable Frank Murphy, Associate Justice of the United States Supreme Court.

(13) Bond on appeal.

(14) Citation, dated October 15, 1941, signed by the Honorable Frank Murphy, Associate Justice of the Supreme Court of the United States, together with acknowledgment of service.

(15) Notice by attorneys for plaintiff to defendants and intervening defendant, and their respective attorneys, calling attention to paragraph 3 of Rule 12 of the Rules of the United States Supreme Court, together with acknowledgment of service thereof and receipt of various papers therein mentioned.

(16) This praecipe.

Berry & Stevens, Claude H. Stevens, Attorneys for Plaintiff and Appellant. 1000 Penobscot Building, Detroit, Michigan.

Dated: October 20, 1941.

We hereby agree that the papers listed in the foregoing praecipe shall constitute the record on appeal in the above entitled cause.

Miller, Canfield, Paddock & Stone, by Fred Glover Jr., Harry Allen, Attorneys for Defendants and Appellants.

Dated: October 20, 1941.

H. J. Rushton, Attorney General, Edmund E. Shepherd, Solicitor General, Attorneys for State of Michigan, Intervening Defendant and Appellee.

Dated: October 31, 1941.

[fol. 77] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 78-79] In Supreme Court of the United States

[Title omitted]

Statement of Points and Designation of Record to be Printed—Filed November 24, 1941

The Municipal Investors Association, Appellant in the above entitled cause, pursuant to paragraph 9 of rule 13 of the Revised Rules of the Supreme Court of the United States, adopts its assignments of error as its statement of the points on which it intends to rely, and designates the whole of the transcript of record as filed with the Clerk of the Supreme Court of the United States, as necessary for the consideration of said cause by the Supreme Court of the United States except that in the printing of the record there shall be omitted the bond on appeal (if not required by the rules or practice of the court) and either the copy of the two opinions of the Supreme Court of Michigan first appearing in the transcript of record or that copy of such opinions attached to the jurisdictional statement (with proper notation of such omission).

Claude H. Stevens, Berry & Stevens, Attorneys for Appellant. Business Address: 1000 Penobscot Building, Detroit, Michigan.

Dated: November 18, 1941.

[fol. 80] Supreme Court of the United States, October Term, 1941

No. 755

[Title omitted]

Order Postponing Consideration of Jurisdiction Until Hearing on the Merits—December 15, 1941

The statement of jurisdiction in this case having been submitted to the Court, further consideration of the ques-

tion of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

[Endorsed on Cover:] File No. 46,083, Michigan Supreme Court, Term No. 755. Municipal Investors Association Appellant, vs. City of Birmingham, a Municipal Corporation, et al. Filed November 24, 1941. Term No. 755 O. T. 1941.

(8464)